

Recommendations 8/6/11

Definitions

NOTE: *The two definitions referenced below are those that received specific suggested edits. Most respondents suggested that the "Definitions" section be moved to an earlier section of the document, and that predominant suggestion is being followed as the prior sections of the document are being re-written.*

Instructional materials: Instructional materials are the curricular content (books, journals, course packs, articles, music, tests, etc.), as well as the technologies required (software and applications) for the manipulation, annotation, and dissemination of content. This definition also includes any other required instructional software and applications used to facilitate the teaching and learning process, **MARK:** *as well as other aspects of participation in the programs of the post-secondary institution.*

Print disability: a print disability means, with respect to an individual, a physical or mental impairment that substantially limits the individual in seeing or reading.

NOTE: *Ashley requests: I'd also like to request that the definition of 'print disability' be changed from 'a physical or mental impairment that substantially limits the individual in seeing or reading' to 'a physical or mental impairment that negatively effects/impacts the individual in seeing or reading' 8/1/11*

NOTE: *The term "Print Disability" is defined in the HEOA:*

“SEC. 771. DEFINITION OF STUDENT WITH A PRINT DISABILITY.

‘In this subpart, the term ‘student with a print disability’ means a student with a disability who experiences barriers to accessing instructional material in nonspecialized formats, including an individual described in section 121(d)(2) of title 17, United States Code.¹

¹ Higher Education Opportunity Act of 2008, Public Law 110-315

Recommendations

NOTE: We received a number of edits suggesting that to enhance the clarity of the recommendations, that some of the supporting detail accompanying each recommendation be relocated to an earlier section of the document. In the revision we are currently developing we are following Maria's suggested outline format and will be addressing each of the perspectives and issues associated with each of the recommendations in the prior report sections. Consequently, the recommendations listed below are accompanied by a shortened version of the explanatory or supporting text. It is hoped that this shortened structure will help highlight the critical issues for discussion.

Recommendation 1. *Postsecondary students who have print disabilities should be able to obtain accessible instructional materials on the open market at the same time and the same cost as mainstream materials, subject to certain reasonable adjustments or exceptions for high cost and/or low incidence circumstances.*

Mark: *Would like Recommendation 1 to read: When post-secondary instructional materials are commercially available in a digital format, the information and all features of the associated digital technology must be natively accessible to persons with print disabilities to the same extent as they to those without such disabilities.*

NOTE: Following recommendations from a number of readers this entire section has been relabeled "A Unified Perspective" and placed earlier in the document. It no longer appears as a "recommendation" since it is, in fact, a premise shared by the entire Commission. It remains in this recommendations document since Mark specifically requested a language modification.

The Commission starts from the premise that individuals who have print disabilities must have equal opportunity and discrimination-free access to participate and succeed in postsecondary education. Unfortunately, for many years, the specialized formats needed by such individuals were expensive and labor-intensive to produce (e.g., Braille versions, recorded books), meaning they were distinct from materials sold in mainstream markets. Put simply, accessible versions were generally limited to book formats and they were available only from specialized sources. Today, however, as digital distribution platforms become more advanced, it is very often the case that the format required for accessibility purposes is the same, or substantially similar to, the format distributed to mainstream markets.

The mainstream and specialized markets are, thus, converging. Commission members agree that convergence is a positive development that should be encouraged in every possible way, including through funding, investments in technology and technical standards, the development of best practices, and, as necessary, incentives and safeguards in the law. As a general rule, the Commission notes that achieving accessibility in the marketplace is the best way to ensure the greatest diversity of content reaches the greatest number of individuals with disabilities in postsecondary settings.

However, the Commission also recognizes that accessible works cannot always be produced through regular publishing processes. Some such works would require significant added production costs to achieve or may only serve limited markets of users—for example, Braille or tactile graphics users. In the case of these high cost and/or low incidence works, the Commission thinks it is unlikely that the open market is likely to provide a meaningful solution, even over time. It is more likely that these works will continue to require the services of specialized libraries, such as those that currently operate on a not-for-profit basis under the Chafee Amendment.

At the same time, the Commission recognizes the burdens on postsecondary institutions and, in particular, the Disability Resource/Service Department (DR/S) offices that work under great resource challenges to meet the needs of students with print disabilities. DR/S offices have largely operated under the fair use copyright exception to fill the void between what students require and what is available from authorized entities operating under the Chafee Amendment.²

However, as technology continues to advance, and instructional materials become more media-rich, DR/S offices are becoming less and less capable of providing "equally effective communication" (CITE) under the law. In short, they lack the resources to create and distribute market-quality versions and are therefore less likely to meet the standards to which postsecondary students are entitled under disabilities laws. To be clear, the copies provided by DR/S offices have been somewhat removed from market standards in the past (e.g. a scanned PDF is not the same as a book)—but the problem has manifested and now become worse because marketplace works contain more graphics, more potential for interactive features, and more hyperlinks, for example.

² The scope of authority under which DR/S offices operate has been a matter of debate among some Commission members. Some believe that DR/S offices qualify as "authorized entities" under the Chafee Amendment whereas others believe that a typical DR/S office falls outside the scope of Chafee and must operate within the limited and uncertain confines of the fair use provision of the Copyright Act. *See* 17 U.S.C. § 107 (providing that "[i]n determining whether the use made of a work in a particular case is a fair use the factors to be considered shall include – (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.").

Against this evolving backdrop, the marketplace is expanding and many larger publishers are migrating to "born-digital" (products first produced for end users in a digital format) multimedia educational products and will be building accessibility directly into products to serve marketplace demands. The role of small or specialized publishers with respect to postsecondary markets is less clear. It is possible accessibility requirements will prove challenging, but it is also possible they may realize cost savings in some circumstances.

NOTE: A number of Commission members believe that the market has already failed
--

In considering market solutions, stakeholders must consider a wide range of instructional materials including not only traditional textbooks sold in print and electronic formats, but also supplementary materials that postsecondary instructors regularly assign, such as trade books, journal articles, scholarly monographs, library reference materials, and interactive on-line materials, as well as assessments.

The Commission received testimony that beyond the first two years of postsecondary instruction, textbooks are often not the primary source of instructional materials. Many advanced undergraduate courses and most graduate courses rely on a mix of journal articles, monographs, and other printed as well as interactive materials. Moreover, instructional materials are increasingly delivered to students via online course management systems that must likewise be accessible in order to effectively deliver content to all students. Therefore, instructional materials need to be viewed as both the content (books, journals, and testing content) as well as the interface (software and applications related to manipulation and annotation of the content), as well as any other instructional software and applications used to facilitate instruction.

In circumstances where the instructional materials consist of open educational software (where there may be no identifiable publisher or distributor) or faculty-developed instructional resources it is still the legal responsibility of post-secondary educational institutions to deploy software or hardware that is accessible to persons with disabilities.

In addition, vendors that provide educational, course management, administrative software, or information services must be required to provide training modules for all students to learn to use these systems for accessing materials.

IHEs must develop efficient and sufficient capacity to locate, create or otherwise acquire high-quality alternate format materials. Materials accessible to and appropriate for student learning vary depending on three factors: the time it takes to acquire and deliver the material; the student's preferred format(s); and the nature of the materials themselves. IHEs and their internal

entities/offices responsible for providing these accommodations, typically DR/S Offices, need to develop and document efficient protocols and procedures for materials acquisition or transformation. In order to achieve the level of efficiency required, the Commission recommends training, technical assistance and renewed focus on best practices.

Recommendation 2. Authors, publishers, producers and other content providers should partner with their consumers to explore more expedient and cost-effective licensing models for the development and delivery of Accessible Instructional Materials.

Certain copyright industries already benefit from the existence of voluntary collective licensing frameworks, which continue to develop for the purpose of licensing the reproduction, distribution, public performance and public display of works of authorship, including those produced and/or accessed in digital forms. Collective licensing models, as described above, operate on an optional or “opt-in” basis on the part of rights holders, who sign up to participate and authorize a collective rights organization to grant licenses to their works as part of its collective offerings. The Commission recognizes that licensing agreements will be addressed by contractual arrangements between publishers and their licensees, or the parties with which the publishers enter into agreements for conversion or other services.

Nothing in a voluntary licensing arrangement is perceived to impede or otherwise limit existing state laws regarding the delivery of AIM or to limit an institution's creation of alternate format materials based on the Fair Use doctrine.

Recommendation 3. If the marketplace fails to achieve accessible formats for post-secondary students with print disabilities, Congress should step in and consider all necessary and appropriate measures, including new statutory or regulatory provisions, that would mandate accessibility for certain materials and devices in the digital marketplace.

Mark: *Recommendation: Along with the development of an accessibility standard, the commission recommends that Congress convene a special hearing to examine the question of whether or not students with disabilities have sufficiently significant remedies under the law to protect their equal access to post secondary educational programs. Specifically, the commission recommends that Congress investigate amending section 502 of the Rehabilitation Act to provide students with disabilities with a legal right to sue for violation of the new access standard.*

Congress should monitor the digital marketplace over time (DATE CERTAIN?) to assess the degree to which there is improvement in the availability of accessible instructional materials for postsecondary students with print disabilities. To the extent there is market failure (i.e., a demonstrated demand sufficient to sustain publishing initiatives on a national level cannot be served efficiently by established market participants or new market entrants), Congress should review all of the relevant and applicable laws to ensure that they provide the incentives, means and appropriate mandates necessary to achieve success. If additional measures are needed, they might include adopting compulsory licenses under copyright law and enacting new statutory and regulatory protections for students with respect to the production of digital materials or devices.

In the event that Congress concludes that market failure has occurred, the commission recommends that Congress may consider a compulsory licensing regime. Compulsory licenses are a limitation on the exclusive rights of authors, publishers and other copyright owners but are enacted to ensure the facilitation of markets that otherwise cannot function effectively, e.g. licensing of certain satellite and cable television markets operate this way. Compulsory licenses are different from exceptions like the Chafee Amendment because rights holders receive payment; however, rates and terms are established by law, rather than through private negotiation.

MARK: Finally, if publishers and technology vendors are not providing accessible instructional materials, legislation should extend the private right of action students already have against their educational institutions for failing to provide equal access to reach the vendors who fail to provide the necessary accessible technology. At present, the legal liability for ensuring equal access rests with post-secondary educational institutions alone. These institutions bear the brunt of inspecting the accessibility of each technology and the accessibility of the content each digital book that is part of any course curriculum. The student, for her part, risks consequences from suing her school that she would not by holding liable third parties who trade in the goods that must be accessible.

George; Jim F; Mark; Linda: As mentioned previously, a number of Commission members believe that market failure has already occurred with respect to the commercial availability of accessible instructional materials and that this circumstance needs to be strongly reflected in both the report and the recommendations.

Recommendation 4. *With respect to digital materials, Congress should establish an Accessible Instructional Materials Standards Board comprised of key stakeholders, and monitor and evaluate the impact of the Board's work. The Board should be tasked with setting standards for digital instructional materials (including adopting certain minimum requirements for standards affecting functionality), and with recommending legislation, and/or promulgating regulations as appropriate.*

Mark: Strengthened to suggest that there should be a date certain for implementation of the new standards board (no later than 2015). 8/2/11

NOTE: Could Recommendation #8 (Functional Requirements); Recommendation #10 (DRM) and Recommendation #11 (Metadata) be placed as subheadings under this recommendation?

In order to ensure that the transition to widespread digital distribution continues to develop in a way that fosters accessibility objectives, many Commission members believe that a standards board or standards-setting organization is necessary to ensure that content suppliers and device manufacturers have clear guidance on accessibility requirements and market expectations. Further, many Commission members envision this standards board, or standards-setting organization as having the responsibility of setting a minimal required set of functional requirements. Some Commission members agree that the United States Access Board may be well suited to take on such a role; the Access Board currently promulgates the accessibility standards as set forth in a variety of federal statutes and regulations, and is well versed in the fact-finding and monitoring activities required of such a standards-setting organization.

Such a Board could: set minimal requirements for accessibility, review, update, and create accessibility guidelines, create a certification of materials as accessible, and encourage the development of authoring tools that create accessible products. This board would not only set standards for files, but would consider accessibility along the entire distribution chain, including all software, hardware, mobile devices and other critical components necessary for delivering or rendering digital materials.

Congress should establish the ability for publishers, systems manufacturers and other important members of the ecosystem to work with the Access Board to include standards that are needed to address content types that are specific to education, for example, W3 standards, the inclusion of page numbers and structure information in eBooks. Publishers should prepare detailed Voluntary Product Accessibility Templates® (VPATs®), in plain language, in instances where an institution requests confirmation from the publisher that a product the publisher is offering

conforms to various legal standards (e.g., Section 508). VPAT exemplars and documentation should be made publicly available on the Internet to support both the creation and interpretation of VPATs.

Recommendation 5. *Congress should encourage all stakeholders – including post-secondary institutions, publishers and other content providers, and manufactures of hardware and software – by offering market supply incentives (such as tax incentives) with respect to the production, sale and purchase of accessible instructional materials and devices.*

Mark: *This Recommendation should be restated to say that in order to encourage use of the new accessibility standard, Congress may want to consider incentive options to accelerate innovation in this area. These incentives should be for the producers of technology not for the universities since our effort is to encourage the market—let’s not confuse this with the obligations on universities already. Also, recommendations for university incentives are covered in another recommendation and we should keep those together as industry incentives and higher ed incentives should not be lumped together as a package.8.2.11*

Some Commission members believe that both publishers and postsecondary institutions could benefit from a scheme focused on market rewards and/or reduced liability. For example, if universities (and their faculty) would agree to limit the assignment of instructional materials to products that comply with accessibility requirements (per a standard-setting organization like that discussed in Recommendation 5), those publishers and other content providers who act in good faith would benefit without fear of competition from less conscientious competitors. Content, hardware, and software certified as meeting accessibility standards, such as Section 508 and WCAG 2.0, would flourish and competition among such products would lead to increased innovation and downward price pressure.

The Commission acknowledges the importance of the June 29, 2010 joint letter issued by the Department’s Office for Civil Rights and the Department of Justice. The Commission supports the joint letter’s request that institutions “refrains from requiring the use of any electronic book reader, or other similar technology, in a teaching or classroom environment as long as the device remains inaccessible to individuals who are blind or have low vision to the extent that a reasonable accommodation or modification for this type of technology does not exist or is not available.”

Recommendation 6. Congress should review the scope, effectiveness, and current function of the Chafee Amendment to determine whether each of its key component elements, as well as the statute taken as a whole in its regulatory approach, serves as the best means for addressing the needs of postsecondary students with print disabilities.

The Chafee Amendment functions as a “safety net” in those circumstances where the market fails to (or is unlikely to) achieve the desired results. That is, in those cases where content owners are not supplying materials in accessible formats on the open market, the copyright exception in Chafee provides a mechanism by which third parties (defined by statute) may create accessible versions subject to certain provisions discussed elsewhere in this report. The Chafee Amendment was passed in 1996 after substantial negotiation and discussion with relevant stakeholders, including publishers, educators and representatives of persons who are blind and dyslexic; it was deliberately drafted to be narrow, ensuring that it would benefit the population that Congress intended to reach without affecting the publishers’ commercial markets. This approach was consistent with the general blueprint for adopting exceptions to the exclusive rights of copyright owners and with the international copyright treaties to which the United States is a party.

Much has changed since 1996. The market for electronic books and other instructional materials and the use of the Internet as a distribution mechanism have both grown dramatically and continue to develop at a rapid pace. Moreover, significant research on the nature and origins of various print disabilities has expanded the general understanding of how such conditions manifest themselves leading to new perspectives on who may require accommodation and who is qualified to make such assessments.

The issue of beneficiary class was examined extensively by the Commission. It was noted that less than one percent (1%) of all post-secondary students are served by the four major authorized entities utilizing Chafee, and that the California Community College system (the largest in the nation) provided accessible instructional materials under ADA accommodations to roughly one half of one percent (0.5%) of their student population. While students with print disabilities arising from vision impairment, blindness and visible physical disabilities were all recognized as qualifying for services under the Chafee copyright exception, confusion over qualifications of students with learning disabilities meant that some of these students qualified for these services and some did not (CITE).

The confusion over qualifications for students with specific learning disabilities, e.g. dyslexia, arises from outmoded language contained in the regulations that are used to interpret the Chafee Amendment. The regulation specifies four categories of disabilities that determine eligibility, the fourth of which is that the beneficiary have a “reading disability resulting from organic

dysfunction” that must be certified by a medical doctor. Organic dysfunction refers to a disability with a physical basis in the central nervous system. www.loc.gov/nls/reference/factsheets/readingdisabilities.html. Unfortunately, this regulatory text has led to confusion as to the general applicability of the Chafee Amendment, adopted many years after the 1931 Pratt-Smoot Act (An Act to Provide Books for the Adult Blind), and the general availability of other services for individuals with specific learning disabilities—for example, dyslexia.

The two major authorized entities focused on serving post-secondary students with print disabilities – Learning Ally and Bookshare – include people with certain learning disabilities in their services regardless of whether they receive MD certification under an “organic dysfunction” analysis. That is, they interpret disabilities such as dyslexia as physical disabilities and allow the broad group of professionals qualifying as a “competent authority” for other categories of eligible beneficiaries to certify the disability. In modern practice, specific learning disabilities are not diagnosed by medical doctors, but instead by psychologists and specialists in special education.

Most of the Commissioners believe “physical limitations” should also be read to include “a reading disability of sufficient severity to prevent the reading of printed material in a normal manner.” They suggest that revising the regulations in this manner would not result in a mass expansion of the beneficiary class under Chafee, because the definition would not include all students with learning disabilities—it would still require that the reading disability be of sufficient severity to prevent the reading of printed material in a normal manner.

NOTE: *The highlighted section above should be moved from Recommendations into a prior section of the report.*

Other Commission members, particularly those representing publishers, strongly oppose this recommendation. The publishers maintain that the existence of the Chafee copyright exception has served as a disincentive to investment in marketplace solutions.

NOTE : *Maria: The statement above is inaccurate. In attempting to combine the two previous recommendations regarding Chafee into one, the draft inadvertently confuses the fact that publishers and others support statutory review of Chafee and that those who suggested the Library of Congress look at its regulations (as a sort of back door approach) were willing to drop that in favor of statutory review as well. 8/3/11*

The issue of specialized format was also discussed extensively. Although the Chafee Amendment included “digital text” formats as part of the definition of specialized formats, at the time Braille and specialized audio tape formats were the dominant formats used for students

with print disabilities. The definition in the legislation is: “Braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities; and, with respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities.” (CITE)

Use of modern technology has led to a blurring of these technical distinctions, to the point that modern personal computers, tablets and smart phones can all have applications capable of playing the specialized formats delivered by the authorized entities (with the exception of physical Braille and large print documents, which are a shrinking proportion of content delivered under the Chafee amendment). The coming merger of the leading commercial electronic book format (the EPUB standard) and the leading specialized format used by libraries for the print disabled (the DAISY standard) raises the question of whether the definition of specialized format should be focused on the distribution limitations (“exclusively for use by blind or other persons with disabilities”) rather than technical formats themselves.

Recommendation 7. The Department of Education and the Justice Department should provide guidance on the limitations on schools’ and testing agencies’ ability to demand extensive documentation, certification and recertification of disability under ADA (as amended), Section 504 and the Chafee Amendment.

The commission acknowledges that some educational institutions, including postsecondary institutions and related testing organizations, require students to periodically reestablish or prove their eligibility for accommodation. The commission believes this requirement for students with long term disabilities and no near-term prospect of improvement provides an unnecessary expense and potential delay in receiving services and accommodations in a timely fashion.

Recommendation 8. The Commission recommends that, rather than adopting a specific file format, that the following list of specific functional requirements be mandated to allow for multiple file formats to satisfy the need for instructional materials to be accessible.

NOTE: Use of the term "mandate " in this recommendation has raised objections. Mandated by whom to whom? Recommendation 5 refers to "certain minimum requirements for standards affecting functionality".

These document characteristics should, at a minimum, include the provision of the following:

- Text must be supplied for text contained in an image;
- Major heading structures;
- Page breaks;
- Page numbers;
- Properly structured information presented in table format
- Brief descriptive text for images, charts, and graphs;
- MathML for mathematical content, and
- a logical reading order.

In line with the functional requirements, the Commission does not recommend that these characteristics apply to documents that did not contain this structure originally - if there are no headings, page breaks or page numbers in the original document, they are not required for the accessible version.

Recommendation 9. Rather than recommending a single centralized clearinghouse, file sharing network or national repository, the Commission recommends that post-secondary students with print disabilities would be best served by explicit support for a wide network of different options and suppliers.

The wide range of needs of students with disabilities cannot be met by any single entity or organization. Rather than creating a national repository like the National Instructional Materials Accessibility Center serving K-12 students with print disabilities, it would be better to support a system that made it much easier to find accessible materials. To the greatest extent practical, students with disabilities should be purchasing mainstream accessible materials through the same channels as non-disabled students. But, there remains a strong need for DR/S offices and accessible media producers to play a role.

When it is necessary for DR/S offices and accessible media producers to convert inaccessible content with accessibility augmentations, it should be possible to share this augmented work with other stakeholders to avoid the costly need to duplicate the accessibility work. These include such additions as tactile graphics, image descriptions (including converting text presented in inaccessible forms), captioning and descriptive video. For example appropriately licensed postsecondary institutions should have some mechanism by which to exchange accessible content pursuant to voluntarily provided licenses from publishers. If one institution has already undertaken to create an accessible version, other institutions that require the same title should not be required to invest in the time and effort to create a new accessible copy – at least when the effort is more than simple. The extensive catalogs of accessible content that some organizations already have in place are an excellent start. For example?

Recommendation 10. Digital rights management (“DRM”) technologies employed by any publishers should not be an impediment to accessibility. Device manufacturers and producers of software applications should work with publishers and their DRM suppliers to ensure that accessible versions are made available without harming publishers’ established and emerging distribution channels.

To ensure that mainstream commercial versions are compatible with adaptive technology used to facilitate accessibility, the Commission believes device manufacturers, software applications producers, and publishers should coordinate and cooperate to ensure that DRM will not serve as an impediment to accessibility endeavors. The Commission further believes that facilitating such an expectation may be an appropriate function of a standard setting organization as described in Recommendation 5.

Recommendation 11. The Commission recommends that publishers facilitate the distribution of AIM by including accessibility elements in metadata.

When accessible products are created they also need to be easily found by purchasers of instructional materials. There are two ways that publishers can communicate the accessible nature of materials offered for sale.

1. Publishing metadata standards, such as Onix;
2. Creation of VPAT’s.

The Commission recommends publishers include accessibility information in metadata standards. Including accessibility information would enable students to find products easily within libraries and bookstores, and would also enable faculty to determine accessibility status of potential syllabus materials.

EdiTeur, an international data standards body for the book industry, is currently spearheading an accessibility metadata initiative that may be relevant to this effort. At a minimum, the Technology Task Force finds appropriate standards should include:

- Title and Author data
- ISBN
- Accessibility metadata on the format, so that the user can distinguish among Braille hardcopy, digital Braille files, human narrated audio, large print, digital text (such as

- DAISY, EPUB) [Who is going to create and keep up the metadata on multiple available formats and at what cost?] (BH)
- Purchase, free or membership access
 - Geographic limitations, if any
 - Other options that can be considered as part of a minimum or optional set:
 - Keywords
 - Subject/category

Recommendation 12. The Commission recommends the establishment of a federated search entity that enables individual students and DR/S Offices to search a single online resource to locate pre-existing accessible sources.

Currently, there is no universal national network for students, DR/S offices and entities that create accessible materials to share these materials. The commission believes that federated search is a core requirement to make support of multiple sources of content practical. The search should be the sum total of what is being offered through commercial websites like Amazon as well as education focused websites such as CourseSmart, as well as specialty providers such as Access Text Network, the American Printing House for the Blind, Bookshare, Learning Ally, the National Library Service and others.

Recommendation 13. The Commission recommends that producers of courseware management systems, Web development software, word processors, and layout programs, among others, be encouraged to create accessibility wizards and prompts that inspect materials for accessibility as they are created and before they are distributed to students.

If popular authoring tools could be employed more efficiently and effectively by course materials producers, the incremental costs of production could be reduced significantly, thereby reducing barriers to the availability of accessible materials.

In particular, The Commission recommends that when posted to Web sites, included in courseware management systems, or as part of electronic documents, STEM materials containing equations and/or scientific notation must be provided to students with disabilities in an accessible form (images of equations alone will not suffice), such as MathML.

Recommendation 14. federal government support for the creation of Braille and tactile graphics materials in postsecondary settings should be established.

There are only a limited number of duplicate requests for a huge volume of materials used in post-secondary settings; and demand is not sufficient to support prospective creation of accessible editions of most post-secondary titles, given current production technologies. Creating braille and tactile graphic versions of STEM and foreign language materials are the most time-consuming and costly materials to produce.

The Commission believes that, at least for the foreseeable future, the production of braille and tactile graphics will fall outside the scope of the current commercial market. The Commission believes that the high production costs combined with the limited demand for or duplication of these materials, especially when the source format is "legacy print" (i.e.; print only), will continue to require government support.

Mark: *What if we recommend that the Department of Education establish a special fund for IHES to make requests for funding. The request would have to meet certain standards and conditions which then could be considered on a case by case basis. The idea would be that there should be clear accountability for what items are produced and what they cost. I do not know if there is any similar set up in other areas within the government. Legality??*

Recommendation 15. While the pedagogical quality of instructional materials should remain the primary basis for content assignments by faculty, postsecondary institutions should be required to aggressively educate faculty, staff, students and university leadership about accessible instructional materials as a condition of receiving federal grant monies. The Commission recommends additional training by experts in the higher education community for the production and delivery of consistent quality Accessible Instructional Materials.

Post-secondary institutions are a major player in the ecosystem that is the Commission's focus and they should have clear mandates for educating their faculty, staff, students and leaders about accessibility laws, standards and practices. Requiring postsecondary institutions to certify that they have educational programs in place (e.g., on-line courses to be completed by professors each year) should be linked to the release of certain federal monies. Congress should consider the best means by which to ensure such a requirement.

The Commission believes that each postsecondary institution should complete a system-wide orientation for faculty and administrators on the importance of ensuring accessibility in all aspects of the education enterprise. Attention should be paid to the training of administrative and non-professional staff, faculty and professional staff, and all other support personnel. Consideration should be given to establishing some benchmarks for proficiency in disability awareness. In addition,, the Commission urges higher education institutions, consistent with the requirements of the ADA and 504, to purchase authoring tools that produce accessible digital publications.

Recommendation 16. Departments and/or faculty must identify and make public necessary course materials (as according to Sec 133 of HEOA of 2008) as soon as possible.

The Commission strongly supports Section 133 (d) of the Higher Education Opportunity Act of 2008 which requires the identification of these materials at the time of course registration. Enforcement of this requirement would accelerate the identification of inaccessible materials and facilitate the acquisition of appropriate formats that could be delivered to the student in a timely manner.

To ensure the timely notification of required course materials, the Commission supports the removal of subsection (i) of Section 133 of the Higher Education Act:

“(i) No Regulatory Authority.--The Secretary shall not promulgate regulations with respect to this section.”

To allow the Secretary to require an assurance from each IHE that active steps have been taken to comply with the Section 133 (d) provisions. The Task Force recommends that postsecondary institutions be required to document compliance with the intent of Section 133 as a condition to participating in the Title IV program.

Comment: *The Commission might want to suggest amendment of this provision to allow OPE to conduct rulemaking and stronger enforcement. Recommendation might be to strike subsection 133 (i) that prohibits federal regulations on this section.*

Recommendation 17. Students communicate requests to DR/S offices as soon as possible upon identification of necessary course materials.

The Commission recommends that as soon as students are notified of the materials that will be used in the course, they inform the DR/S office. This will ensure that the DR/S office will have enough time to acquire or create the necessary accommodations. The Commission duly notes

that failure of students to make early notice of a course does not waive their rights to alternate materials access.

MODEL PROGRAMS

Recommendation 18. The Task Force recommends that a demonstration project to a major post-secondary institution engaged in implementing a campus-wide approach to accessibility be competed

This demonstration project would highlight the tools and techniques found by the university to be effective. In addition, this project could address what works, what has not worked, and other barriers and issues. The Task Force envisions that this would include creating templates for how accessibility may be built into the administrative structure: sample language for purchasing; for RFPs and contracts; faculty guidelines, and other resources that could evolve into "models" to be disseminated.

Possible Projects between Rights Holders and Universities

In the context of accessibility and higher education, collective licensing could take several forms. For example, it might allow a university to negotiate a blanket license with a designated collective organization, which could be CCC or could be an existing organization experienced in serving the print-disabled populations. Such a license might allow the university to convert non-digital, legacy materials, or digital materials that are not student-ready, on an as-needed basis. Or, the license could authorize an entity like Learning Ally (formerly known as Recording for the Blind and Dyslexic), Bookshare or the National Library Service for the Blind & Physically Handicapped to create and deliver the necessary works. This framework would eliminate the laborious and costly process of identifying and contacting rights holders individually, on a case-by-case basis. Instead, it would allow institutions to deal with one party that would be able to license rights for a variety of regularly used materials, often in advance through a single blanket agreement.

However, the Commission recognizes that, in many instances, the rights holder may not have the rights to authorize digital reproduction and distribution of an entire work without first obtaining permission from third-party rights holders – for example, for the use of prefatory text, photographs or other component parts used by the publishers under agreements from other publishers, producers, historical societies, authors or photographers. Such works will necessarily require special treatment under a collective rights arrangement.

Possible Pilot Projects with Specialized Libraries or other Intermediaries

While Commission members agree that a collective licensing model would be a welcome development, some expressed reservations about the effectiveness of such a scheme if not tied to a trusted file delivery mechanism. For this reason, the Commission believes that the development of a model collective licensing scheme would be ideal for a pilot project to demonstrate the effectiveness of the approach.³

Some members of the Commission believe that a pilot project could assist in the development of standard agreements that could be the basis of future voluntary licensing agreements, particularly with smaller publishers/producers who have limited financial and legal resources. Outcomes of any licensing pilot should be analyzed to determine whether the market has met the need for accessible materials. In some instances, voluntary licensing could facilitate the creation of an accessible version used in educational settings.

Recommendation 19. The Commission recommends for the Department of Education to offer a discretionary grant opportunity to fund a demonstration project for STEM faculty

Since STEM disciplines provide special challenges to accessibility because of the highly technical nature of course materials and the prevalence of “hands on” activities, the Task Force recommend partnering with prominent science, math, and engineering professional organizations (e.g. American Chemical Society, American Physics Society, American Society for Engineering Education, Mathematical Association of America) and NSF (Research in Disabilities Education and other Directorates) to fund a demonstration project focusing on professional development for STEM faculty to increase their awareness and expertise around increasing accessibility for students with disabilities at graduate and undergraduate levels.

³ For example, a project might harness several major publishers to achieve a “critical mass” of licensable content; use an existing collective licensing agent such as CCC to allow the project to leverage existing structure, technology, and content licensing relationships; and engage an existing authorized entity to catalog, if not convert and deliver, the electronic files. Ideally, the pilot would last for at least 18 months, once established, and participation would be on an application basis, with a well-represented cross section of institutions (e.g., two- and four-year schools; various sizes). If successful, the pilot would prove the viability of the collective licensing concept in the accessibility arena, perhaps encouraging new players to enter the space, leading to increased innovation and reduced prices as a result of competition.